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# Alaggandiran a/l Vellu v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–6 OF 2006
SURIYADI, KN SEGARA AND AHMAD MAAROP JJCA
12 OCTOBER 2009

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*Criminal Law — Murder — Appeal — Whether trial judge erred at close of prosecution case by wrongly evaluating evidence — Whether at conclusion of trial prosecution had proved their case beyond reasonable doubt*

D

*Evidence — Witness — Interested witness — Whether trial judge not cautious in accepting evidence of interested witness and an accomplice wholly without independent corroboration*

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On 3 May 1999 while two brothers, Vickneswaran and Viveganathan were on their way to the supermarket on a motorcycle ridden by the former with the latter as the pillion, they crossed paths with one Alaggandiran a/l Vellu ('the accused') and another, who were also riding on a motorcycle. The accused stopped the two brothers and invited them to go to a shop to have drinks and talk. The brothers agreed and at the accused's suggestion exchanged motorcycles to their destination. The accused rode Vickneswaran's

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motorcycle with the latter as his pillion, while Viveganathan became the pillion rider on the other motorcycle, which was ridden by the accused's companion. The accused did not proceed to the shops for drinks as intimated earlier but instead led them to an area behind a factory where two others were waiting and stopped there. Before Viveganathan could get down from the

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motorcycle, he witnessed the accused taking out a knife from his shoulder bag to stab his brother Vickneswaran ('the deceased'). The deceased fell onto the road and lay prone while the accused stabbed him several times again. During this time the deceased's brother was held back by the accused's accomplice ('the accomplice'), and restrained from going to the deceased's aid. Then the

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accused's accomplice struck the deceased's brother with a piece of wood and all four fled from the scene of the crime. The deceased's brother with the aid of his friend managed to send the deceased to the hospital but at the hospital the deceased succumbed to his injuries. According to the pathologist, the cause of death of the deceased was 'stab injuries to the heart and liver'. The

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accused was charged with the offence of murder, found guilty, convicted and sentenced to death by the High Court. This was the accused's appeal against that conviction on the grounds, inter alia, that the trial judge had erred at the close of the prosecution case by wrongly evaluating the evidence before him; that the trial judge was not cautious in accepting the evidence of the

deceased's brother, an interested witness, and an accomplice wholly without independent corroboration; that the trial judge had erred in treating the discrepancies between the testimonies of the interested party and the accomplice as minor.

**Held**, dismissing the appeal:

(1) The trial judge had applied all the correct principles and tests in evaluating the evidence for the prosecution and the defence at all stages of the trial. The trial judge had neither erred in his finding of facts nor occasioned any serious miscarriage of justice or misdirection to warrant the acquittal of the accused. Although the trial judge may have made an undesirable comment at the close of the prosecution's case, a careful reading of the paragraph in which the statement appeared and all the preceding paragraphs of his judgment showed that he was fully aware that the standard of proof on the prosecution at the close of its case was to make out a prima facie case and that at the conclusion of the trial the court should consider all the evidence adduced and decide whether the prosecution had proved its case beyond reasonable doubt (see paras 12–13).

(2) The deceased's brother was an eyewitness who saw the accused stab his brother several times and was therefore a crucial prosecution witness. Although he was an interested party in that he would most certainly wish to have the accused punished for the death of the deceased, his brother, the trial judge had exercised a sufficient degree of caution in accepting the evidence given by the deceased's bother. Further the evidence given by the deceased's brother on the issue of the deceased being stabbed with a knife was also supported by the pathologist's findings (see para 15).

(3) The trial judge had made a positive finding that the person who prevented the deceased's brother from giving assistance to the deceased while he was being stabbed by the accused and who later assaulted the deceased's brother with a piece of wood, was an accomplice. However, the accomplice's evidence was sufficiently corroborated by the evidence given by the deceased's brother and the pathologist's findings. As such there was no reason to interfere with the trial judge's finding that the accomplice was a credible witness (see paras 16–17).

(4) The trial judge had considered the defence of the accused very carefully and made a finding at the conclusion of the trial that it was a bare denial. There was no reason to disturb those findings (see para 19).

**[Bahasa Malaysia summary**

Pada 3 Mei 1999 semasa dua adik beradik, Vickneswaran dan Viveganathan dalam perjalanan ke sebuah pasar raya dengan motosikal yang dibawa oleh

Vickneswaran dan Viveganathan sebagai pembonceng, mereka berselisih dengan Alaggandiran a/l Vellu ('tertuduh') dan seorang lagi, yang juga menunggang motosikal. Tertuduh menahan kedua-dua adik beradik itu dan mengajak mereka ke sebuah kedai untuk minum dan berbual. Adik beradik tersebut setuju dan atas cadangan tertuduh bertukar-tukar motosikal mereka untuk ke destinasi. Tertuduh menunggang motosikal Vickneswaran dan dia menjadi pemboncengnya, dan Viveganathan membonceng motosikal yang satu lagi, yang ditunggang oleh teman tertuduh. Tertuduh tidak menuju ke kedai untuk minum seperti yang diajak tadi tetapi membawa mereka ke kawasan di belakang sebuah kilang di mana dua yang lain sedang menunggu dan mereka berhenti di situ. Sebelum Viveganathan turun dari motosikal, dia nampak tertuduh mengeluarkan sebilah pisau daripada beg sandangnya untuk menikam Vickneswaran ('si mati'). Si mati jatuh tertiarap di jalan raya dan tertuduh menikamnya lagi beberapa kali. Semasa ini berlaku, abang si mati ditahan oleh rakan subahat tertuduh ('rakan subahat'), dan dihalang daripada membantu si mati. Kemudiannya rakan subahat tertuduh memukul abang si mati dengan sebatang kayu dan keempat-empat mereka lari dari tempat kejadian. Abang si mati dengan bantuan sahabatnya membawa si mati ke hospital tetapi semasa di hospital, dia mati akibat daripada kecederaannya. Menurut ahli patologi, sebab kematian si mati adalah 'stab injuries to the heart and liver'. Tertuduh dituduh dengan kesalahan membunuh, didapati bersalah, disabit dan dihukum dengan hukuman mati oleh Mahkamah Tinggi. Ini merupakan rayuan tertuduh terhadap sabitan tersebut atas alasan-alasan, antara lain, bahawa hakim bicara telah khilaf pada penutup kes pendakwaan, kerana silap menilai keterangan di hadapannya, bahawa hakim bicara tidak berhati-hati dalam menerima keterangan abang si mati, yang merupakan saksi yang berkepentingan, dan seorang rakan subahat secara keseluruhannya tanpa keterangan sokongan bebas; bahawa hakim bicara telah khilaf apabila menganggap percanggahan antara keterangan pihak yang berkepentingan dan rakan subahat sebagai tidak penting.

**Diputuskan**, menolak rayuan:

(1) Hakim bicara telah menggunapakai semua prinsip dan ujian yang tepat dalam menilai keterangan pihak pendakwaan dan pembelaan pada kesemua peringkat perbicaraan. Hakim bicara tidak silap dalam penemuan faktanya atau mengakibatkan salah laksana keadilan atau salah arah yang membolehkan tertuduh dibebaskan. Walaupun hakim bicara mungkin telah membuat komen yang tidak diingini pada penutup kes pendakwaan, pembacaan teliti ke atas perenggan di mana penyataan tersebut dibuat dan kesemua perenggan selepasnya dalam penghakimannya menunjukkan bahawa beliau sedia maklum bahawa standard pembuktian pihak pendakwaan pada penutup kesnya adalah untuk membuktikan kes prima facie dan bahawa pada kesimpulan perbicaraan tersebut mahkamah harus mempertimbangkan semua

keterangan yang dikemukakan dan memutuskan sama ada pihak pendakwaan telah membuktikan kesnya melampaui keraguan yang munasabah (lihat perenggan 12–13).

(2) Abang si mati merupakan saksi yang melihat tertuduh menikam adiknya beberapa kali dan oleh itu merupakan saksi penting pendakwaan. Walaupun dia merupakan pihak yang berkepentingan yang mana dia tentunya ingin tertuduh dihukum atas kematian si mati, adiknya, hakim bicara telah mengamalkan tahap waspada yang sepatutnya dalam menerima keterangan yang diberikan oleh abang si mati. Selanjutnya, keterangan yang diberikan oleh abang si mati atas isu si mati ditikam dengan pisau juga disokong oleh penemuan ahli patologi (lihat perenggan 15).

(3) Hakim bicara telah membuat penemuan positif bahawa orang yang menghalang abang si mati daripada membantunya semasa si mati ditikam oleh tertuduh dan yang kemudiannya memukul abang si mati dengan sebatang kayu, merupakan rakan subahat. Tetapi, keterangan rakan subahat disokong secukupnya dengan keterangan yang diberikan oleh abang si mati dan juga penemuan ahli patologi. Oleh itu, tiada alasan untuk mencampuri keputusan hakim bicara bahawa rakan subahat tersebut adalah saksi yang boleh dipercayai (lihat perenggan 16–17).

(4) Hakim bicara telah mempertimbangkan pembelaan tertuduh dengan teliti dan telah memutuskan pada kesimpulan perbicaraan tersebut bahawa ianya penafian semata-mata. Tiada sebab untuk mencampuri keputusan tersebut (lihat perenggan 19).]

**Notes**

For a case on appeal, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1154.
For cases on interested witness, see 7 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2858–2865.

**Legislation referred to**

Criminal Procedure Code ss 180(1), 182A(1)
Penal Code s 302

**Appeal from**: No 45–6 of 2000 (High Court, Shah Alam)

*Rajpal Singh (Rajpal, Fira & Associates) for the appellant.*
*Kwan Li Sa (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.*

**KN Segara JCA:**

**[1]** In May 1999 Vikneswaran a/l Nagapan was a 16 year old teenager. He

apparently had a girlfriend named Vickneswari. She is a cousin of Chellah and Baskaran who are brothers. Baskaran is the elder brother of Chellah.

**[2]** Viveganathan a/l Nagapan is the elder brother of Vikneswaran. They live together in the same house in Sg Buloh. On 3 May 1999 at about 9pm the two brothers went to the ASB Supermarket which is about 2–3km away from their house to buy two packets of Maggi mee. They went to the supermarket on a motorcycle ridden by Vikneswaran with Viveganathan as the pillion. On their way back home from the supermarket they crossed the path of Chellah and Agilan who were on a motorcycle (ridden by Agilan). Chellah and Agilan are known to Viveganathan and Vikneswaran.

**[3]** Chellah and Agilan stopped them and invited them to go to a shop to have drinks and talk together. At the suggestion of Chellah they exchanged motorcycles for their destination. Chellah rode the motorcycle Vikneswaran was riding and Vikneswaran became the pillion instead. Viveganathan, on the other hand, became the pillion rider on the motorcycle ridden by Agilan.

**[4]** Chellah rode ahead as the lead rider with his pillion. Agilan and his pillion followed behind him. Chellah did not proceed to the shop for drinks as intimated earlier. Instead, Chellah led them to an area behind a factory. There, awaiting their arrival at the scene were Baskaran and Mimi.

**[5]** To Viveganathan's horror, even before he could get down from Agilan's motorcycle, he saw Chellah take out a knife from a bag over Chellah's shoulder and stab his brother in the stomach. When Viveganathan got off Agilan's motorcycle he was held by Mimi and restrained from going to his brother's aid. He was told not to interfere in a problem essentially between Chellah and Vikneswaran.

**[6]** Vikneswaran fell on to the road and lay prone. Chellah further stabbed him several times again. Then Agilan and Baskaran struck Vikneswaran with a piece of wood. Thereafter, the three assailants and their accomplice, Mimi, fled from the scene, leaving Viveganathan behind with his brother. Vikneswaran was in pain. His body and clothes were smeared in blood. He was still alive and breathing.

**[7]** Viveganathan went to the house of his friend Chandra Mogan, about 2km away, to seek help for his brother. He returned to the scene with Chandra Morgan in a car to send his brother to the Sg Buloh Hospital. About half an hour after their arrival at the hospital, Vikneswaran succumbed to his injuries.

**[8]** The forensic pathologist, Dr George Paul (SP9), carried out a post-mortem on the body of Vikneswaran on 4 May 1999 at about 11am. According to the pathologist the cause of death of the deceased was 'stab injuries to heart and liver'.

**[9]** Allaggandiran a/l Vellu, the appellant (accused) herein, who is also known as Chellah, was charged with the offence of murder for causing the death of the deceased, Vikneswaran. He was found guilty and convicted for the offence of murder punishable under s 302 of the Penal Code by the learned judge High Court, Shah Alam. He was sentenced to death.

**[10]** The appeal before us hinges only on four main points. Learned defence counsel urges upon us to acquit and discharge the accused because:

(a) The learned trial judge has erred at the close of the prosecution by wrongly evaluating the evidence before him;

(b) The learned trial judge was not cautious when accepting the evidence of SP3 (interested witness) and SP7 (accomplice) wholly without independent corroboration;

(c) The learned trial judge decided that the discrepancies between SP3 and SP7 is minor and can be disregarded;

(d) The learned judge failed to consider that the prosecution had failed to prove that 'Mimi' is actually SP7.

**[11]** We have considered very carefully the submissions of learned defence counsel. We have perused through the notes of evidence and record of appeal to ascertain whether the prosecution had in fact established a prima facie case against the accused at the close of the prosecution's case and, thereafter, at the conclusion of the trial, had proved their case beyond reasonable doubt.

**[12]** We are satisfied that the trial judge has applied all the correct principles and tests in evaluating the evidence for the prosecution and the defence at all stages of the trial. We are also of the view that he has not erred in his finding of facts. We are unanimous that the trial judge has not occasioned any serious miscarriage of justice or misdirection to warrant the acquittal of the accused. Nevertheless, we are of the view that it was undesireable of the judge to have stated, (perhaps intended only as a matter of observation without having expressly so stated) 'Tertuduh pada tahap ini, tidak ada menimbulkan sebarang keraguan yang munasabah terhadap kes pendakwaan', in one of the passages of his grounds of judgment. The passage referred to reads as follows:

A Setelah menimbangkan keterangan saksi-saksi pendakwaan dan hujah kedua-dua pihak, saya berpuashati bahawa pendakwaan telah berjaya membuktikan kes prima facie terhadap tertuduh dan dengan itu telah memanggil beliau membela dirinya. Tertuduh pada tahap ini, tidak ada menimbulkan sebarang keraguan yang munasabah terhadap kes pendakwaan.

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**[13]** Such a statement, taken out of context and interpreted for its purported implications without regard to the evidence before the court, could lead to the perception that the trial judge was requiring the accused to establish a doubt on the prosecution's case even before the defence was called. C The further perception would be that such failure would lead to the accused's inevitable conviction. If this was in fact rooted in the mind of the trial judge, then he would be guilty of a misdirection on the burden of proof at the close of the prosecution's case. However, upon a careful reading of the paragraph in which the statement appears and all the preceding paragraphs of his D judgment, as well as the paragraphs that follow, we are satisfied that *he was fully aware that the standard of proof on the prosecution at the close of its case is to make out a prima facie case* ( s 180(1) of the Criminal Procedure Code ('CPC')) *and that at the conclusion of the trial the court shall consider all the evidence adduced and decide whether the prosecution has proved its case beyond* E *reasonable doubt* ( s 182A(1) of the CPC). It is elementary that in criminal law (short of any explicit statutory exceptions to the contrary) the accused is not required to prove his innocence at any stage of a trial. The burden rests squarely on the shoulders of the prosecution throughout the trial to prove the charge beyond reasonable doubt, more so, at the close of the case for the F defence (that is, at the conclusion of the trial).

**[14]** There is no doubt that Viveganathan (SP3) and Nagentharan (SP7) are crucial prosecution witnesses on whose testimony the charge against the G accused rests heavily. If their testimony is rejected, then the accused must be acquitted. However, we have no reason to interfere with the trial judge accepting their evidence as credible.

**[15]** SP3 is the brother of the deceased. His evidence is entitled to credence H until cogent reasons for disbelief can be advanced. He was at the scene. He was an eye witness. He saw the accused stab his brother. There is no doubt he is an interested witness in that he would most certainly wish to have the perpetrator/s punished for the death of his brother. All that the law demands is that SP3's evidence should be scrutinised with sufficient caution to I safeguard against any temptation to falsely implicate the accused. We are satisfied that the trial judge has exercised sufficient degree of caution in accepting SP3's evidence. SP3's evidence on the issue of the deceased being stabbed with a knife is also supported by the pathologist, SP9's findings. In accepting SP3's evidence, the trial judge stated:

Setelah mendengar dan melihat SP3 memberi keterangan, saya mendapati ia seorang saksi yang boleh dipercayai. Ia tidak memperlihatkan kepada saya sebagai seorang saksi yang berat sebelah. Keterangannya bahawa si mati telah ditikam dengan sebilah pisau di perutnya beberapa kali adalah disokong dan konsisten dengan jenis-jenis kecederaan yang dijelaskan oleh SP9. SP9 juga ada memberikan pandangannya bahawa kecederaan yang dialami oleh si mati adalah disebabkan oleh senjata tajam.

**[16]** There is no doubt that SP7 is an accomplice. The trial judge did in fact make a positive finding that SP7 was an accomplice. SP7 did go to the scene with Agilan. He prevented SP3 from giving any assistance to the deceased when he was being stabbed by the accused. SP7 also assaulted the deceased with a piece of wood. He had been arrested by the police as a suspect and then released.

**[17]** It is a rule of prudence that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. We are satisfied that his evidence is sufficiently corroborated by SP3's evidence and credence must be given. SP3 and SP7 were at the scene and both had the opportunity to witness the accused stabbing the deceased. Furthermore, the pathologist's findings support SP7's evidence that the deceased was stabbed with a knife. We have no reason to interfere with the trial judge's finding that SP7 was a credible witness. He stated in his judgment as follows:

Walaupun SP7 seorang rakan jenayah, saya mendapati ia seorang yang boleh dipercayai dan keterangannya adalah disokong oleh SP3, iaitu seorang saksi bebas. Keterangan SP7 bahawa si mati telah ditikam dengan sebilah pisau juga adalah konsisten dengan kecederaan yang dialami oleh si mati seperti yang telah diterangkan oleh SP9 didalam keterangan lisannya dan juga di dalam laporan bedah siasatnya.

Tidak dinafikan bahawa terdapat percanggahan keterangan di antara SP3 dan SP7, termasuk bagaimana dan dengan siapa tertuduh pergi ke tempat kejadian dan jarak kedudukan masing-masing dengan tempat si mati ditikam oleh tertuduh. Bagaimanapun saya mendapati percanggahan tersebut adalah percanggahan yang kecil dan tidak material. Ini tidak langsung menjejaskan kredibiliti mereka atau *menimbulkan keraguan mengenai siapa yang menikam siapa dan jenis senjata yang digunakan*.

(Emphasis added.)

**[18]** The defence of the accused, in a nutshell was that he did not stab the deceased and, on the contrary it was the deceased who had stabbed him. He denied that he had brought along with him any knife when he met the deceased and his brother at the football field. He admitted that on the day of the incident he had told his brother, Baskaran, and his cousin, Agilan, that

he was going to search for the deceased and have a talk with the deceased, as the deceased had allegedly been disturbing his cousin Vickneswari.

**[19]** We are satisfied that the trial judge had considered the defence of the accused very carefully and at the conclusion of the trial made a finding that the accused's defence was a bare denial. He found that the prosecution had proved its case beyond a reasonable doubt and expressed it in his judgment as follows:

> Setelah menimbangkan keterangan pendakwaan dan keterangan pembelaan, saya berpuashati bahawa pendakwaan telah membuktikan kesnya melepasi keterangan yang menasabah dan tertuduh tidak dapat menimbulkan keraguan yang menasabah terhadap kes pendakwaan. Keterangan tertuduh sendiri adalah penuh dengan percanggahan dan keterangannya bahawa ia tidak menikam si mati adalah merupakan penafian semata-mata.

**[20]** We are unanimous that this appeal is without merits. We are satisfied the conviction is safe. Appeal is dismissed. Conviction and sentence of the High Court is affirmed.

*Appeal dismissed.*

Reported by Kohila Nesan